

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DIAGEO NORTH AMERICA, INC.,

Plaintiff/Counterclaim Defendant,

v.

W.J. DEUTSCH & SONS LTD. d/b/a DEUTSCH  
FAMILY WINE & SPIRITS, and BARDSTOWN  
BARREL SELECTIONS LLC,

Defendants/Counterclaim Plaintiffs.

Case No. 1:17-cv-04259-LLS

**SPECIAL VERDICT FORM**

**PART I: Infringement of the Bulleit Trademark Registration**

1. Did Defendant Deutsch establish by a preponderance of the evidence that the Bulleit Design Mark and Trade Dress are functional?

Answer: Yes \_\_\_\_\_ No X

GO TO THE NEXT QUESTION.

2. Did Defendant Deutsch establish by clear and convincing evidence that Plaintiff Diageo abandoned the Bulleit Packaging Trademark?

Answer: Yes \_\_\_\_\_ No X

GO TO THE NEXT QUESTION

3. Did Defendant Deutsch establish by clear and convincing evidence that Plaintiff Diageo obtained the Bulleit Trademark Registration through intentional fraud on the U.S. Patent and Trademark Office?

Answer: Yes \_\_\_\_\_ No X

GO TO THE NEXT QUESTION

4. Did Plaintiff Diageo establish by a preponderance of the evidence that the registered Bulleit Packaging Trademark is valid and protectable?

Answer: Yes X No \_\_\_\_\_

**Instruction:** If you answered Yes to Question 4, go to Question 5. If you answered No to Question 4, skip to Question 6.

5. Did Plaintiff Diageo establish by a preponderance of the evidence that the Redemption Bottle Design creates a likelihood of confusion with the registered Bulleit Packaging Trademark?

Answer: Yes \_\_\_\_\_ No X

GO TO NEXT QUESTION

**PART II: Infringement of the Unregistered Bulleit Trade Dress**

6. Did Plaintiff Diageo establish by a preponderance of the evidence that the unregistered Bulleit Trade Dress is distinctive?

Answer: Yes X No \_\_\_\_\_

GO TO NEXT QUESTION

7. Did Plaintiff Diageo establish by a preponderance of the evidence that the unregistered Bulleit Trade Dress is non-functional?

Answer: Yes X No \_\_\_\_\_

**Instruction:** If you answered Yes to Questions 6 and 7, go to Question 8. If you answered No to either Question 6 or 7, skip to Question 9.

8. Did Plaintiff Diageo establish by a preponderance of the evidence that the Redemption Bottle Design creates a likelihood of confusion with the unregistered Bulleit Trade Dress?

Answer: Yes \_\_\_\_\_ No X

**Instruction:** If you answered Yes to Questions 4 and 5 or to Questions 6, 7 and 8, go to Question 9. If you answered No to any Question 4 through 8, skip to Question 10.

**PART III: Infringement of the Bulleit Trade Dress at Common Law**

9. Did Plaintiff Diageo establish by a preponderance of the evidence that Defendants Deutsch acted in bad faith and violated common law prohibitions against trademark infringement?

Answer: Yes \_\_\_\_\_ No X

**Instruction:** If you answered Yes to Question 6, go to Question 10. If you answered No to Question 6, skip to Question 14.

**PART IV: Dilution of Plaintiff Diageo's Bulleit Packaging Trademark Under Federal Law**

10. Did Plaintiff Diageo establish by a preponderance of the evidence that the Bulleit Trade Dress is Famous?

Answer: Yes X No \_\_\_\_\_

GO TO NEXT QUESTION

11. If you answered yes to the previous question, did Plaintiff Diageo establish by a preponderance of the evidence that the Redemption bottle design created a likelihood of dilution of the Bulleit Packaging Trademark under federal law?

Answer: Yes X No \_\_\_\_\_

GO TO NEXT QUESTION

**PART V: Dilution of Plaintiff Diageo's Bulleit Packaging Trademark Under New York Law**

12. Did Plaintiff Diageo establish by a preponderance of the evidence that Defendant Deutsch caused a likelihood of dilution of the Bulleit Packaging Trademark under New York law?

Answer: Yes X No \_\_\_\_\_

**Instruction:** If you answered Yes to Questions 5, 8, or 11, go to Question 13. If you answered No to Questions 5, 8, or 11, skip to Question 14.

**PART VI: Defendant Deutsch's**

13. Did Defendant Deutsch establish by a preponderance of the evidence that the Redemption Bottle Design was a fair use?

Answer: Yes \_\_\_\_\_ No   X  

**Instruction:** If you answered Yes to Questions 10 and 11, go to Question 14. If you answered No to Questions 10 or 11, skip to Question 15.

**PART VII: Damages**

14. Did Plaintiff Diageo establish by a preponderance of the evidence that Defendant Deutsch willfully diluted the Bulleit Packaging Trademark under federal law?

Answer: Yes \_\_\_\_\_ No   X  

**Instruction:** If you answered Yes to Question 13, skip to Question 19. If you answered No to Question 13 and you answered Yes to any of Questions 5, 8, or 14, go to Question 15.

15. Did Plaintiff Diageo establish by a preponderance of the evidence that it is entitled to recover actual damages due to Defendant Deutsch's willful dilution of the Bulleit Trade Dress or its infringement of the registered or unregistered Bulleit Trade Dress?

Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

GO TO NEXT QUESTION

16. If you answered yes to the previous question, what amount of actual damages is Plaintiff Diageo entitled to recover?

Answer: \_\_\_\_\_

GO TO NEXT QUESTION

17. Did Plaintiff Diageo establish by a preponderance of the evidence that it is entitled to recover all or a portion of Defendant's profits due to Defendant Deutsch's willful dilution of the Bulleit Trade Dress or its infringement of the registered or unregistered Bulleit Trade Dress?

Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

GO TO NEXT QUESTION

18. If you answered yes to the previous question, what amount of Defendant Deutsch's profits is Plaintiff Diageo entitled to recover?

Answer: \_\_\_\_\_

**Instruction:** If you answered Yes to Question 9 and answered No to Questions 15 and 17, go to Question 19.

19. Did Plaintiff Diageo establish by a preponderance of the evidence that it is entitled to recover actual damages due to Defendant Deutsch's use of the Bulleit Trade Dress in violation of common law?

Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

GO TO NEXT QUESTION

20. If you answered yes to the previous question, what amount of actual damages is Plaintiff Diageo entitled to recover?

Answer: \_\_\_\_\_

**YOU HAVE NOW COMPLETED YOUR DELIBERATIONS. SIGN THIS VERDICT FORM AND INFORM THE MARSHAL THAT YOU ARE READY TO RETURN TO THE COURTROOM.**

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DATE: 6/1/22